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TEOBROS DEVELOPMENT SDN BHD

v.

TENAGA NASIONAL BHD

B

HIGH COURT MALAYA, MELAKA
MOKHTARUDIN BAKI J
[CIVIL SUIT NO: 22-93-2007]
1 AUGUST 2007

C ***PUBLIC UTILITIES:*** *Electricity - Construction of pylons - Intention to build on lots belonging to plaintiff - Whether disruption of electricity supply would be caused by an injunction to restrain the defendant from entering the affected lots at this stage - Defendant's failure to comply with s. 11(10) Electricity Supply Act 1990 - Whether balance of convenience* D *in favour of plaintiff - Whether necessary to preserve status quo - Whether plaintiff's application for interlocutory injunction allowed*

CIVIL PROCEDURE: *Injunction - Interlocutory injunction - Application for - Intention to construct electricity pylons on lots belonging* E *to plaintiff - Whether still possible for the State Authority to decide in favour of the plaintiff and direct the defendant to re-align the Supply Line out of the affected lots - Whether disruption of electricity supply would be caused by an injunction to restrain the defendant from entering the affected lots at this stage - Defendant's failure to comply with s. 11(10)* F *Electricity Supply Act 1990 - Whether balance of convenience in favour of plaintiff - Whether necessary to preserve status quo - Whether plaintiff's application for interlocutory injunction allowed*

The defendant was a public listed company licensed under the Electricity Supply Act 1990 to carry out the business of supplying G electricity in Malaysia. The defendant had a right to enter private land to erect electricity pylons for their transmission lines but they must comply strictly with the requirements of the Electricity Supply Act 1990. Alternatively, the defendant may choose to acquire the land permanently by the use of the Land Acquisition H Act 1960. The plaintiff commenced this civil suit against the defendant because the plaintiff had bought six lots of land at a public auction and had become the owner of those lots of land. Official searches conducted by the plaintiff on the Register Document of Title of the six lots of land before the auction I showed no endorsement at all of any right of way of the defendant Tenaga Nasional Berhad. The plaintiff's architect and town planner had completed drawing their plans to turn the six

lots of land into a housing estate and had made enquiries with the defendant about future supply of electricity into the proposed new housing estate. While they were making the enquiries, the defendant disclosed that electricity pylons would be constructed across three out of the six lots of land bought by the plaintiff ('the three affected lots'). In opposing the plaintiff's application for interlocutory injunction, the defendant filed an affidavit which disclosed that in the year 1997, the defendant had already intended to perform a project and sent out official notices to the previous owner of the three affected lots. The defendant had also said that an order was issued by the District Land Administrator pursuant to s. 11(7) Electricity Supply Act 1990 to allow the defendant to enter the three affected lots to erect electricity pylons. However, in this case, the defendant admitted that they had not deposited a copy of the Land Administrator's order for registration with the Registrar of Land Titles. It was the defendant's stand that it was not the defendant's duty to do so under s. 11(10) of the Electricity Supply Act 1990. Counsel for the defendant submitted that it was the Land Administrator's duty to do so because he submitted that the three affected lots of land were 'land office titles'. The plaintiff argued that it was the defendant's duty to deposit the land administrator's order with the registrar of land titles. At this interlocutory stage, it was necessary to consider whether the plaintiff had shown serious *bona fide* issues and examine the balance of convenience.

Held (allowing plaintiff's application for interlocutory injunction):

(1) The three affected lots are 'registry titles' under the control of the Registrar of Land Titles. They were not 'Land Office titles.' In other words, after the Land Administrator made an order under Electricity Supply Act 1990, it was necessary for a copy of the order to be deposited with the Registrar of Land Titles in a different office, to be registered on the Register Document of Title of the three affected lots. The Registrar of Land Titles here and the Land Administrator are two different positions within the administration of the Melaka State Authority. (para 9)

(2) The defendant herein had intended to build pylons in the three affected lots but they have not done so yet. In other words, since they have not entered the plaintiff's land yet, it was still possible for the State Authority to decide in favour

of the plaintiff and direct the defendant to re-align the Supply Line out of the three affected lots so that the plaintiff's housing project would not be destroyed in the future. No disruption of electricity supply would be caused by an injunction to restrain the defendant from entering the three affected lots at this stage. (paras 16 & 17)

(3) It was the defendant who caused the problems now faced by the plaintiff because the defendant failed to comply with s. 11(10). If the defendant had complied with the requirement to deposit a copy of the Land Administrator's order with the Registrar of Land Titles, the official searches conducted by the plaintiff before buying the three affected lots would have shown what had transpired. (paras 18 & 21)

(4) The plaintiff had prayed for an interlocutory injunction until further order. There was nothing wrong with this because a further order would have to be made in any event either after trial or after the hearing of some other applications. As it was now necessary to preserve the *status quo* and the balance of convenience was in favour of the plaintiff, the plaintiff's application for an interlocutory injunction must therefore be allowed. (paras 22 & 23)

Case(s) referred to:

Keet Gerald Francis Noel John v. Mohd Noor Abdullah & Ors [1995] 1 CLJ 293 CA ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(refd)***

Pow Hing & Anor v. Registrar of Titles, Malacca [1980] 1 LNS 120 FC ***(refd)***

Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd [2000] 1 CLJ 695 CA ***(dist)***

Legislation referred to:

Electricity Supply Act 1990, ss. 11(7), (10), 14

For the plaintiff - Gan Techiong; M/s Gan & Lim

For the defendant - Azlan Sulaiman (Mahir Juhari with him); M/s Azmi & Assoc

Reported by Suhainah Wahiduddin

JUDGMENT

Mokhtarudin Baki J:

[1] The defendant is a public-listed company licensed under the Electricity Supply Act 1990 to carry out the business of supplying electricity in Malaysia. The defendant has a right to enter private land to erect electricity pylons for their transmission lines but they must comply strictly with the requirements of the Electricity Supply Act 1990. Alternatively, the defendant may choose to acquire the land permanently by the use of the Land Acquisition Act 1960.

[2] The plaintiff commenced this civil suit against the defendant because the plaintiff had bought 6 lots of land at a public auction held on 23 April 2007 at the High Court at Melaka and had become the owner of those land.

[3] Official searches conducted by the plaintiff on the Register Document of Title of the 6 lots of land before the auction showed no endorsement at all of any right of way of the defendant Tenaga Nasional Berhad.

[4] Trouble started when the plaintiff's architect and town planner had completed drawing their plans to turn the 6 lots of land into a housing estate and they made enquiries with the defendant about future supply of electricity into the proposed new housing estate. While they were making the enquiries, the defendant disclosed that electricity pylons would be constructed across 3 out of the 6 lots of land bought by the plaintiff, namely across GRN 20737 lot No. 987, GRN 20738 lot No. 988 and GRN 6217 lot No. 989 mukim of Sungei Petai, Melaka ("the 3 affected lots").

[5] In opposing the plaintiff's application for interlocutory injunction, the defendant filed an affidavit which disclosed that in the year 1997, the defendant had already intended to perform a project known as "Projek Talian Penghantaran 275/132 kV dari Kelemak, Melaka ke Sg Mati, Johor" and sent out official notices to the previous owner of the 3 affected lots. The defendant also said that an order was issued by the District Land Administrator pursuant to s. 11(7) Electricity Supply Act 1990 to allow the defendant to enter the 3 affected lots to erect electricity pylons. Section 11(7) expressly refers to the "District Land Administrator" and not to the "Registrar of Titles". It reads as follows:

A 11(7) Upon the conclusion of the enquiry the **District Land Administrator** may either unconditionally or subject to such terms, conditions and stipulations as he thinks fit, make an order authorizing or prohibiting any of the acts mentioned in the notice given under subsection (2). The order shall be substantially in the form set out in the Second Schedule: (emphasis added)

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[6] Section 11(7) is not the end of the story where the said s. 11(7) order is concerned. The next relevant section is s. 11(10), which reads as follows:

C 11(10) Notwithstanding any written law relating to land matters, **the Registrar**:

(a) upon the production to him of the notice issued by the licensee under subsection (2) together with the statement by the District Land Administrator that no objection had been D lodged by any of the persons mentioned in subsection (3); or

(b) **upon the production to him of the original order made under subsection (7) and upon the deposit with him of a certified copy of such order,**

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shall cause to be made on the **register document of title** relating to the land **affected by the** notice or **order** as the case may be, **a note of the existence of the rights under such** notice or **order**. (emphasis added)

F **[7]** It is to be noted that s. 11(10) expressly refers to the "registrar", that is, the Registrar of Titles and not to the "District Land Administrator".

[8] In this case the defendant admitted that they did not deposit G a copy of the Land Administrator's order for registration with the Registrar of Land Titles. However, the defendant's counsel took the stand that it was not the defendant's duty to do so under s. 11(10). Counsel for the defendant said it was the Land Administrator's duty to do so because he submitted that the 3 H affected lots of land were "Land Office titles". In other words, he was submitting that the Land Administrator wears 2 hats; as land administrator and also as Registrar of Land Titles.

[9] With respect, the defendant's counsel's submission was I wrong because the 3 affected lots, namely GRN 20737 lot No. 987, GRN 20738 lot No. 988 and GRN 6217 lot No. 989 refer to Grant (or in Malay "Geran") which are "Registry titles" under the control of the Registrar of Land Titles. They are not "Land

Office titles". In other words, after the Land Administrator made an order under Electricity Supply Act 1990 it is necessary for a copy of the order to be deposited with the Registrar of Land Titles in a different office, to be registered on the Register Document of Title of the 3 affected lots. The Registrar of Land Titles here and the Land Administrator are two different positions within the administration of the Melaka State Authority.

[10] Whose duty is it to deposit the Land Administrator's order with the Registrar of Land Titles? The plaintiff's counsel submitted that it is the defendant's duty. Though s. 11(10) does not expressly say it is the defendant's duty, a purposive and common sense approach in reading that section would make it obvious that it must be the defendant's duty to do so. If someone obtains an order in his favour in a court, that person who wants the benefit of that order must present it to the Registrar of Land Titles for registration. In this case, it is obvious that the Land Administrator's order was exclusively for the benefit of the defendant.

[11] Another point raised in the plaintiff's affidavit, and which was not rebutted by the defendant was the fact that throughout all these years whenever a Land Administrator's order is issued to give the defendant a right of way to enter any land, it had always been the defendant who deposited a copy of the Land Administrator's order for registration with the Registrar of Land Titles. This amounts to an implied admission by the defendant that it is indeed their duty under s. 11(10) to do so.

[12] It is to be noted that the "right of way" that may be granted by the Land Administrator under s. 11(7) to the defendant is not a permanent and indefeasible right. It is relevant to point out that s. 14 of the Electricity Supply Act 1990 starts with the heading "14. Removal or alteration of supply line, etc." and reads:

> (1) Where a supply line has been laid, or posts or equipment erected, on any land under section 11, and if *any of the persons mentioned in section 11(3) desires to use the land in such a manner as to render it necessary or convenient that the line,* posts or equipment *should be removed* to another part of the land, or to land at a higher or lower level, or be altered in form, he *may require the licensee, to remove* or alter the line, posts or equipment accordingly.

(2) (a) If the licensee omits to comply with the requisition, *the person may apply in writing to the State Authority* which may, in its discretion, after enquiring into all the facts of the case, reject the application or *make an order,* either absolutely or subject to certain conditions, *for the removal or alteration of the line,* posts or equipment. *The order shall provide for the payment of the cost of executing the removal* or alteration *by the licensee* or by the person making the application, as the State Authority may consider equitable in the circumstances of the case. (emphasis added)

[13] This is the position of the law because upon application by the landowner under s. 14 mentioned above, the State Authority may at any time issue an order to require the defendant to remove the electricity line out of the land and may even order the defendant to bear "the cost of executing the removal or alteration". Therefore, the defendant has a temporary right to enter private land to erect electricity pylons for their transmission lines if they use the Electricity Supply Act 1990, and a permanent right if and only if they choose to acquire the land permanently by using the Land Acquisition Act 1960.

[14] In any event, we are at the interlocutory stage and the above facts showed that the plaintiff had raised serious *bona fide* issues and have satisfied the first test laid down by the Court of Appeal in *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors* [1995] 1 CLJ 293 in considering applications for interlocutory injunctions. The next question is where is the balance of convenience?

[15] The defendant relied on the Court of Appeal decision in *Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd* [2000] 1 CLJ 695. This case must be distinguished because the facts are different. A close reading of that judgment showed that the Court of Appeal actually dismissed Tenaga Nasional Berhad's appeal with costs, but set aside the injunction and substituted it with an order for damages to be paid by Tenaga Nasional to Dolomite the landowner. The reason was because the pylons were already erected by Tenaga Nasional and already in use as part of the national electricity grid. In the *Dolomite* case, it would have caused very serious disruption of electricity supply all over the country if the pylons were to be moved.

[16] In our case here, the facts are different from *Dolomite*'s case. The defendant had intended to build pylons in the 3 affected lots but they have not done so yet. In other words, since they have

not entered the plaintiff's land yet, it is still possible for the State Authority to decide in favour of the plaintiff and direct the defendant to re-align the Supply Line out of the 3 affected lots so that the plaintiff's housing project would not be destroyed in the future.

[17] No disruption of electricity supply would be caused by an injunction to restrain the defendant from entering the 3 affected lots at this stage. The defendant failed to state in their affidavits when they intend to enter the 3 affected lots. Since they have delayed for nearly 10 years, it is possible that they intend to delay for a few more years. The plaintiff's counsel submitted that the plaintiff is entitled to plead estoppel against the defendant due to the delay of almost 10 years, and that the plaintiff may apply for *certiorari*, judicial review and other orders in this case. At this interlocutory stage, it is only necessary to consider whether the plaintiff had shown serious *bona fide* issues and examine the balance of convenience.

[18] For the present moment, it is fair to remember that it was the defendant who caused the problems now faced by the plaintiff because the defendant failed to comply with s. 11(10). Though no time limit is mentioned in that section, in a similar situation the Federal Court had applied the Interpretation Act 1948 and ruled that a delay of seven years was unreasonable delay. The Federal Court held in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14 as follows:

> *It is true that section 10 of the Act does not prescribe the time within which the inquiry into the compensation must be held* but looking at the Act as a whole no one could deny that the proceedings under the Act are meant to be in a continuous motion so that no such interruption or such undue delay or stoppage as to amount to an abandonment of the acquisition could be regarded as within this motion. Under section 38 of the Interpretation and General Clauses Ordinance, 1948 it is provided that:
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> > *Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed* and as often as the prescribed occasion arises.
>
> What then is the "convenient speed"? In our view it must be "as soon as possible" or "within a reasonable time", and not "as late as possible". Obviously what amounts to "convenient speed" must vary from case to case and *in our judgment seven years delay is certainly not a convenient speed" as it is so far outside the normal*

A *period of time that no reasonable authority could ever regard it as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal.* (emphasis added)

[19] Following the judgment of the Federal Court in the *Ong Gaik Kee*'s case, it is obvious that the defendant's delay of almost 10 years must be held to be unreasonable.

[20] The importance of an endorsement in the Register Document of Title of a piece of land had been emphasised by the fact that under our Torrens System, the Register Document of Title is 'everything'. In *Pow Hing & Anor v. Registrar of Titles, Malacca* [1980] 1 LNS 120, the importance of an endorsement on the Register Document of Title was emphasised by the Federal Court who held:

> A note of the service of a notice of demand on the registered proprietor in Form 6A is required by section 97(2) to be endorsed by or at the instance of the Collector on the register document of title to the land to which the notice relates. *This requirement is clearly to give notice to all and sundry with existing or prospective interests in the land in question that a forfeiture may be imminent* in the event of non-compliance by the registered proprietor with the notice of demand, and the endorsement required by section 97(2) has in our view the purpose, force and effect of a caveat to the world at large to this end. (emphasis added)

[21] If someone making an official search cannot rely on an official search result, where else can he look to for some certainty? In our case here if the defendant had complied with the requirement to deposit a copy of the Land Administrator's order with the Registrar of Land Titles, the official searches conducted by the plaintiff before buying the 3 affected lots would have shown what transpired in 1997.

[22] The plaintiff had prayed for an interlocutory injunction until further order. There is nothing wrong with this because a further order would have to be made in any event either after trial or after the hearing of some other applications.

[23] As it is now necessary to preserve the *status quo* and the balance of convenience is in favour of the plaintiff, the plaintiff's application for an interlocutory injunction (encl. 3) must therefore be allowed.